

Aff Answers

Perm

Coordination between the USFG and State governments solve best – proves perm solves

Rachael E. Salcido. 2008. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. Professor of Law Director, Sustainable Development Institute Director, Environmental Law Concentration B.A., J.D., University of California, Davis Professor Rachael Salcido is a scholar of environmental and natural resources law, with particular expertise in ocean and coastal law and ecosystem restoration. Her articles have appeared in prominent law journals and she is an active member of the Rocky Mountain Mineral Law Foundation. GD

Area-Based Ocean Management Similar to the interest in regional governance, **area-based ocean management has emerged recently as another tool to encourage ecosystem-based management**, although it is not a new concept. **The National Marine Sanctuaries program is an example of area-**

based ocean management. The program was established by the Marine 1432 TULANE LA WRE VIEW [Vol. 82:1355 Protection, Research, and Sanctuaries Program, adopted in 1972. 495 The program seeks to preserve areas of special national or international significance.⁹⁶ **Some sanctuaries and reserves delineate areas of state and federal**

jurisdiction, providing an important opportunity for ecosystem-based management across the three-mile boundary.⁹⁷ Additional federal legal authorities exist to continue this approach to zoning of

ocean areas under U.S. jurisdiction.⁹⁸ Like marine sanctuaries, Marine Managed Areas (MMAs) or MPAs are regulatory tools that facilitate ocean management based on delineated physical boundaries respecting natural boundaries and environmental processes, rather than political subdivisions.⁹⁹ MPAs are an increasingly important tool used for restoring marine ecosystems and encouraging

sustainable development."^o **Area-based ocean management has enjoyed not only national**

interest, as illustrated by National Marine Sanctuaries, **but state interest as well."** Indeed, in **light of the growing number of MMAs and MPAs, the federal government has made an effort to coordinate these management goals across political subdivisions**. Executive Order 13,158 was

issued on May 26, 2000.² President Clinton announced the goal of protecting marine resources "for the benefit of present and future generations" through the use of a national system of marine protected areas."³ NOAA has recently adopted an initial framework

OFFSHORE FEDERALISM for a national system of MPAs as required by Executive Order 13,158."⁴ **The framework**

was deemed necessary to facilitate synergies between the different MMAs adopted and overseen by various sovereigns, such as states and tribes.⁵ **Further, the federal**

government would "avoid causing harm to MPAs through federally conducted, approved, or funded activities.⁵ **NOAA's regulatory undertaking to create the national MPA system framework involved extensive public meetings and consultation with federal, state, local, and tribal representatives, as well as citizens and other stakeholders**.⁷ In evaluating the trade-offs for state involvement, state stakeholders voiced concerns about

the commitment of national resources to the objectives outlined in the national MPA system. ⁸ Previously, **the federal**

government pledged funding for coastal planning if states adopted coastal management plans pursuant to the CZMA.⁹ Over time, the funds that states receive through the CZMA

have dwindled, and thus implementation of state CMPs has suffered." ¹⁰ CZMA CMPs must incorporate national concerns and fulfill national standards, providing the additional imperative that federal funding continue to support these programs."¹¹ The lack of financial commitment by the federal government to implementing state CMPs now cautions state stakeholders participating in the national MPA program. The reasonable concern is that states will expend resources to link their MPA programs with national goals but will not see the benefits promised by federal agencies because federal budget priorities may change.

Barriers/Race Bottom

Multiple legal barriers to increased State actions affects solvency

Rachael E. Salcido. 2008. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. Professor of Law Director, Sustainable Development Institute Director, Environmental Law Concentration B.A., J.D., University of California, Davis Professor Rachael Salcido is a scholar of environmental and natural resources law, with particular expertise in ocean and coastal law and ecosystem restoration. Her articles have appeared in prominent law journals and she is an active member of the Rocky Mountain Mineral Law Foundation. GD

Increased State Governance While the EPA of 2005 retreated from cooperative federalism, a different approach would be to **move towards increased state influence and management of offshore developments**.⁴²²

Delegating certain offshore development responsibilities to the states has been explored TULANE LA WREVIEW by different

policy makers and scholars.⁴²³ **Proposals to increase state control over offshore areas face significant challenges on several fronts.** First, **proposals face challenges at an**

institutional capacity level. It is well-recognized that **states have limited financial resources**

and staff in coastal positions to address the potential regulatory processes needed to **facilitate offshore development within the EEZ**. These institutional capacity concerns go beyond purely

economic considerations. As **the Supreme Court noted** in the earliest of tidelands disputes, *United States v. California*,

"[t]he state is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the

dominion which it seeks."²⁵ Foremost in the Court's consideration, although hypothetical to the case in question, was

keeping peace in times of war.²⁶ **Related concerns with vesting coastal states with increased authority or jurisdiction offshore included foreign relations issues and maintaining**

robust commerce. ⁷ The federal navigational servitude, which preserves the right of navigation in support of interstate commerce, as well as other federal constitutional powers (such as the War Power or the Treaty Power) go far to protect these concerns regardless of 411 jurisdictional rearrangements. Overall, **these concerns do not persuasively support**

eliminating or even reducing the role of states. They instead illustrate the continuing need to accommodate certain national interests in any regulatory scheme affecting

coastal and ocean areas. States do not need the power to wage war or regulate international relations in order to participate meaningfully in coastal and ocean

development ¹⁴²⁰ [Vol. 82:1355 OFFSHORE FEDERALISM **decisions**. Other institutional capacity concerns are

surmountable, as some states have already assembled the expertise, technological resources, and financial support necessary for active coastal regulatory programs. ⁹ Second, **there are divergent theories about the level of development**

and environmental protection that might be achieved if states exercised primary responsibility. Some argue that states may be overwhelmed and unduly enticed by the pecuniary benefits of development to the

detriment of environmental protection. ^{3°} Arguments similar to these have characterized such **state action as a "race-to-**

the-bottom" and have been the subject of rich discourse in the academic literature. ^{3'} In some regions, minerals extraction and natural gas and oil drilling might increase, but in other regions, the status quo of limited or

measured development would remain.³² On the other hand, it is also argued that **states may not adequately**

consider the national interest in the development of resources, leading to underdevelopment. ³³

Impacts: Environment

USfg does it better - Centralized Government is key to proliferating new technology for environment policies

Alder 2 [Jonathan H. Alder is an Assistant Professor of Law, Case Western Reserve University School of Law. This chapter is adapted from the report Let Fifty Flowers Bloom: Transforming the States Into Laboratories of Environmental Policy, published by the American Enterprise Institute in January 2002, available at

<http://www.federalismproject.org/masterpages/environment/flowers.pdf>.] JAKE LEE

Centralizing environmental decision making and subjecting states to substantial federal oversight limits the potential for innovation in environmental policy. As

regulatory **requirements proliferate, opportunities for experimentation dwindle.**

Nonetheless, states are seeking out opportunities to lessen the costs and improve the performance of environmental systems. These experiments range from financial

incentives for conservation measures and nonpoint source pollution controls to expedited or more flexible permitting systems.³⁰

From brownfield redevelopment plans and audit privilege rules to property- based water management and unified, multimedia permitting systems, states are trying to find ways of maximizing the return on investments in environmental policy.³¹

Indeed, when the federal government innovates, it is often replicating successful state efforts.³²

*****Affirmative Answers*****

Uniqueness

Uniq: Federalism Low/ States power high

Nonunique - Bush spent eight years expanding federal authority – impacts should have already happened

John Dinan and Shama Gamkhar May 14th, 2009 (Dinan is a professor of political science at Wake Forest, Gamkhar is a professor of public affairs at the University of Texas at Austin) “The State of American Federalism 2008–2009: The Presidential Election, the Economic Downturn, and the Consequences for Federalism” Published in Publius: The Journal of Federalism” page online:

<http://publius.oxfordjournals.org/cgi/content/full/pjp012> // GD

Still to be determined is whether Obama will be guided by a general approach to federal-state relations. Although George W. **Bush opened his presidency by professing concern for federalism and state interests, he was notably inattentive to federalism considerations in office—supporting expansion of federal authority even on issues where Republicans had traditionally deferred to state authority** such as education, prescription drug coverage, driver's licenses, and welfare policy, and **rarely perceiving any tension between his policy priorities and state prerogatives or concerns**

(Conlan and Dinan 2007). It remains to be seen how Obama will handle situations where his policy priorities are in tension with state interests, and whether he will be any more attentive than his predecessor to federalism concerns in these crucial instances. To date, however, Obama has offered several important professions of respect for states' role in the federal system, most notably in a December 2008 address to governors in Philadelphia and in a February 2009 toast to governors whom he honored by inviting them to the White House for his first presidential state dinner. Moreover, Obama and his cabinet can be expected to be sensitive to the perspective of state and local governments, as a result of the president's experience as an Illinois state legislator and his appointment of current or recent state and local office-holders to head the Departments of Education, Homeland Security, Commerce, and Health and Human Services. These developments suggest at least the possibility of a different approach to federal-state relations (Harkness 2009).

Policy makers are shifting away from federalism in the status quo

Edwards 13 (Chris, “Fiscal Federalism”, The director of tax policy studies at Cato, He is a top expert on federal and state tax and budget issues. Before joining Cato, Edwards was a senior economist on the congressional Joint Economic Committee, a manager with PricewaterhouseCoopers, and an economist with the Tax Foundation, June, http://www.downsizinggovernment.org/sites/downsizinggovernment.org/files/pdf/fiscal-federalism_0.pdf)

The federal government has developed a hugely complex financial relationship with state governments through the grants-in-aid system. **The system has grown steadily for more than a century as the federal government has become involved in an increasing array of state and local activities.** Today there are more than 1,100 different federal aid programs for the states, with each program having its own rules and regulations. **The system is a complicated mess, and it is getting worse all the time.** It wasn't supposed to be this way. Under the U.S. Constitution, the federal government was assigned specific, limited powers and most government functions were left to the states. To ensure that people understood the limits on federal power, the nation's founders added the Constitution's Tenth Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The Tenth Amendment embodies federalism, the idea that federal and state governments have separate areas of activity and that federal responsibilities were “few and defined,” as James Madison noted. Historically, federalism acted as a safeguard

of American freedoms. President Ronald Reagan noted in a 1987 executive order, “Federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government.”¹ **Unfortunately, policymakers and courts have mainly discarded federalism** in recent decades. Congress has undertaken many activities that were traditionally reserved to the states and the private sector. **Grants-in-aid are a key mechanism that the federal government has used to extend its power into state and local affairs.** Grant programs are subsidies that come part and parcel with **federal regulations designed to micromanage state and local activities.** The federal government will spend \$561 billion on aid to the states in 2013, making aid the third largest item in the federal budget after Social Security and national defense.² Some of the major federal aid programs are in the areas of education, health care, housing, and transportation. **There are few, if any, advantages of federalizing state and local activities through grant programs, but many disadvantages. The aid system encourages excessive spending and bureaucratic waste, creates a lack of political accountability, and stifles policy diversity and innovation in the states. With the ongoing flood of red ink in Washington, now would be a good time to begin cutting the vastly overgrown grants-in-aid system.**

Recent state laws on marijuana prove that federalism low now

Schoenherr 14

(Neil Schoenherr, Senior News Director at Washington University in St. Louis, July 29, 2014, <http://www.linkedin.com/pub/neil-schoenherr/8/796/7a2>) Akshay Bapat **A bill introduced July 28 in the U.S. House of Representatives would amend the Controlled Substances Act — the federal law that criminalizes marijuana — to exempt plants with an extremely low level of THC, the part of marijuana that makes users high. ¶ The bill follows closely on the heels of a call by The New York Times editorial board for the federal government to legalize marijuana. It could mark a turning point of sorts in the campaign for legalization,** said Gregory P. Magarian, JD, professor of law at Washington University in St. Louis.[¶] **¶ “Maybe the most important point is that federalization of drug laws is the proverbial train that long ago left the station,” he said. “The federal government in the 1980s and ’90s federalized more and more drug crimes. Now, therefore, the federal government doesn’t have a path of least resistance on marijuana and other drug laws.** The federal government has to decide whether to continue to commit federal resources to prosecuting marijuana crimes.”[¶] **The New York Times piece makes a good point, Magarian said, about the selective enforcement of drug laws at the federal level. ¶ “If marijuana enforcement just becomes a tacitly lower priority at the federal level, it remains open to a future, hard-line administration to put the hammer back down,” he said. “To put the point another way, if the federal government wants to get out of the business of punishing marijuana crimes, it should say so formally, through legislation, rather than simply propounding an informal hands-off policy that people may not be able to trust going forward.”**

Uniq: Obama Kills Fism

nonunique – Obama is not a federalist - only supports state's rights when it supports his agenda

John Dinan and Shama Gamkhar May 14th, 2009 (Dinan is a professor of political science at Wake Forest, Gamkhar is a professor of public affairs at the University of Texas at Austin) "The State of American Federalism 2008–2009: The Presidential Election, the Economic Downturn, and the Consequences for Federalism" Published in Publius: The Journal of Federalism" page online:

<http://publius.oxfordjournals.org/cgi/content/full/pjp012> // GD

It is important not to overstate Obama's support for state experimentation. As James E. Tierney, director of the National State

Attorneys General Program at Columbia University, noted after the EPA policy shift was announced: **"I don't think we have a hallmark, sweeping view of states' rights here."** Rather, Tierney argued, **"the Obama administration is going to take these one at a time" and "will be with the states as long as the states fit in with his view of the national interest"** (quoted in Schwartz 2009).

However, the political dynamics at the start of this administration are aligned so that liberal and progressive causes are in several areas currently being advanced by decentralization of policy authority. Insofar as these sorts of issues remain atop the policy agenda, Obama will continue to be in a position to both advance his party's policy goals and support policy decentralization.

Education Policies in Washington proves Federalism is Low

Blankship 14

(Donna Gordon Blankinship, reporter for Associated press, July 28, 2014,

<http://www.spokesman.com/stories/2014/jul/28/washington-stands-alone-on-federal-education-law/>) Akshay Bapat

SEATTLE – **Education Secretary Arne Duncan's plan to give schools a break from student-testing mandates in the federal No Child Left Behind law appears to be working in 42 states and the District of Columbia.** When the past school year began, four states were in danger of losing their waivers from aspects of the law. **But only one has actually lost the flexibility Duncan began promoting in 2011: Washington.** The three others – Oregon, Kansas and Arizona – appear to be on the path to resolving their differences with the federal government.¶ The waivers are considered a temporary measure while Duncan works with Congress to rewrite the No Child Left Behind law.¶ **Members of both parties agree the law – which required every child in the nation to be reading and doing math at grade level by 2014 – is broken, but they have been unable to agree on a fix.**¶ While it has been praised for focusing on the performance of minorities, low-income students, English-language learners and special education students, the education law has led to a number of schools being labeled as “failing” and some say it encourages instructors to teach to the test.¶ **Under the federal waiver system, states can create their own accountability process, while they wait on Congress to come up with a permanent solution.**¶ The U.S. Department of Education describes its requirements for the states as follows: making rigorous and comprehensive plans for improving learning for all students, closing achievement gaps, increasing equity and improving the quality of instruction.¶ **The fine print – and what some would call independence or stubbornness – is what tripped up Washington state and put it back under the 2001 federal education law's requirements.**¶ Duncan has told

Washington the state can have its waiver back anytime it wants to change its teacher-evaluation system to include student achievement on statewide academic tests as a factor in judging teachers. **But the state teachers union and lawmakers on both sides of the aisle say the federal government is asking too much.** Washington schools chief Randy Dorn doesn't agree. He will continue working to convince the state Legislature to change Washington's teacher-evaluation system, a goal he failed to achieve this past year, Dorn said. "The disappointing part to me is that I thought we had a great solution," he said. **Dorn said he didn't think the proposed change to state law – going from optional use of statewide tests to mandatory use in teacher evaluations without a specific goal on how big a factor the tests would be – would have changed the way teachers are evaluated.** Principals are already looking at student data and discussing it with teachers and then working together to set goals, Dorn said. He doesn't believe making this the law instead of just the practice would change much. **The Washington Education Association argues that lawmakers did the right thing in rejecting what it calls Duncan's inflexible and bureaucratic demands.** Union spokesman Rich Wood said Duncan earlier this year praised Washington state for its school improvement, which it accomplished without meeting his demands. **Dorn said he believes he has a better chance of getting cooperation from the Legislature this year, because it will be wrestling over the state's biennial budget starting in January.** That situation will give lawmakers dollars to trade as well as philosophies, he said.

Federalism low – Hobby Lobby

Murphy 7/10

(Murphy is an author for the Napa Valley Register, July 10, 2014, "Decision continues Federalism vs. Anti-Federalism debate",

http://napavalleyregister.com/news/opinion/mailbag/decision-continues-federalism-vs-anti-federalism-debate/article_476dce48-f52b-51e0-8cab-d9a97494656e.html) Akshay Bapat

Regarding the Hobby Lobby Supreme Court ruling last week, it is really the conflict between Federalism and Anti-federalism. Does the administrative branch of the federal government have the right to ignore a congressional statute that has been signed in to law? **The Hobby Lobby case was not about an individual's right to choose to have an abortion or contraceptive use, but "does the federal government have the right to coerce people opposed to abortions to become complicit in them by funding abortion-inducing drugs or devices?"** The Green family took the anti-federal position that they should not have to pay for abortion-inducing drugs. What is slipping by is the personal responsibility a sovereign person has for the care of one's self. There is no right to abort a child. It is a matter of conscience of the mother to be. The reasoning that there is a "right" to abortion is anti-federalist/federalist argument. It may be a fit discussion for philosophers, but not for the reality of the day-to-day business of life. The framers listed our "rights;" all the additions are temporary items of current fashion. The federal government, to the dismay of the anti-federalist, is asking the American people to relinquish their sovereignty to a single sovereign or a group acting as a sovereign. The Court's ruling does not mean that any person has an unqualified right to object to any governmental mandate that violates their religious beliefs. Reasonable people realize that

there are no rights that are unqualified or absolute. The Supreme Court reaffirmed the right of Americans to both hold and live by their convictions. **Though a small setback for federalism, it may become a step toward strengthening one's individual rights.** This decision was neither anti-woman nor continuing the war on women, but one that upholds an individual's right for self-determination.

Uniq: Fism Low – Regulations

Federalism low in the context of regulation

NTDA 14

(National Trailer Dealers Association, 7-17-14, “COMMITTEE PASSES BILLS TO ENSURE BALANCE, CERTAINTY, & FEDERAL-STATE PARTNERSHIP IN REGULATION OF NATION’S WATERS”, <http://www.ntda.org/ntda/News/tabid/59/post/committee-passes-bills-to-ensure-balance-certainty-federal-state-partnership-in-regulation-of-nation-s-waters/Default.aspx>, amp, July 17 2014) Akshay Bapat

The Committee on Transportation and Infrastructure approved several bills related to the regulation of the Nation’s waters – legislation to provide greater regulatory certainty, protect and maintain the balanced federal-state regulatory partnership, and prevent overreach by the federal government. The following measures were approved during the markup: The Waters of the United States Regulatory Overreach Protection Act of 2014 (H.R. 5078), introduced by U.S. Rep. Steve Southerland (R-FL), **is bipartisan legislation to uphold the federal-state partnership in regulating the Nation’s waters and prohibit the Environmental Protection Agency and the Army Corps of Engineers from implementing a rule that broadens the scope of the Clean Water Act and expands the federal government’s regulatory power. “I am pleased the Committee has acted in a bipartisan fashion to recognize the role that states must play in regulating waters within their respective boundaries,” Southerland said. “By turning back the administration’s brazen power grab, we’ve stood in defense of a federal-state partnership that has worked for 40 years. As a result, we’ve taken the first step in restoring certainty for the farmers, manufacturers, and construction and transportation industries driving economic growth.” The Regulatory Certainty Act** (H.R. 4854), **introduced by Water Resources and Environment Subcommittee Chairman Bob Gibbs** (R-OH), **defines the exact period of time the Environmental Protection Agency is allowed to restrict or deny a Clean Water Act dredge and fill** (wetlands) permit under Section 404(c), **and clarifies that the EPA does not have the authority to disapprove or revoke such a permit before the Army Corps of Engineers has completed its review of a permit application or after the Corps of Engineers has issued the permit. “I am pleased that the Regulatory Certainty Act of 2014 was voted out of committee,” said Gibbs. “This bipartisan bill will make common sense reforms to the environmental review process by clarifying the EPA’s veto authority under section 404(c) of the Clean Water Act and ensuring that the EPA does not kill a project without just cause. The EPA should not be denying permits before they are even applied for, or revoking permits without a violation. This bill ensures that the environment is protected, businesses have certainty, and more jobs can be created.” The Coal Jobs Protection Act of 2014** (H.R. 5077), introduced by U.S. Rep. Shelley Moore Capito (R-WV), **preserves the authority of each state to make determinations relating to the state’s water quality management program**, and restricts the EPA’s ability to second-guess or delay a state’s permitting and water quality standards decisions. **“Five thousand fewer West Virginians are employed as coal miners today compared to two years ago, and this administration’s policies and the EPA’s regulatory assault on the coal industry account for most of these job losses,” Capito said. “The Coal Jobs Protection Act is a critical step in fighting back against this**

administration's anti-coal policies and holding the EPA accountable for the consequences of their actions. No longer will the EPA be able to drag its feet in making permitting decisions or avoid holding public hearings on new regulations. By restoring authority to state governments, **we will ensure that economic and environmental needs of communities are addressed by the people who know these concerns the best – the people who live there – not by Washington bureaucrats.** I will continue to bring the voice of West Virginia workers and families to Washington as I fight for policies that grow our economy and create jobs.” The Committee also approved **27 General Services Administration Capital Investment and Leasing Program resolutions that will result in \$914 million in taxpayer savings through space reductions,** space consolidations, and avoided lease costs. Furthermore, **the Committee passed H. Con. Res. 103, authorizing the use of the Capitol Grounds for the District of Columbia Special Olympics Law Enforcement Torch Run;** and H.R. **3044 – to approve the transfer of Yellow Creek Port properties in Iuka,** Mississippi.

Uniq: Fism Now

Federalism low now—states have power

Ernst, 14

(joni beta, The Daily Beast, “Exclusive: GOP Senate Candidate Caught Saying States Can Nullify Laws”, <http://www.thedailybeast.com/articles/2014/07/28/exclusive-gop-senate-candidate-caught-saying-states-can-nullify-laws.html>, July 28 2014) Akshay

Bapat

Joni Ernst, the Republican nominee for U.S. Senate in Iowa, appears to believe states can nullify federal laws. In a video obtained by The Daily Beast, Ernst said on September 13, 2013 at a forum held by the Iowa Faith & Freedom Coalition that Congress should not pass any laws “that the states would consider nullifying.” “You know we have talked about this at the state legislature before, nullification. But, bottom line is, as U.S. Senator why should we be passing laws that the states are considering nullifying? Bottom line: our legislators at the federal level should not be passing those laws. We’re right...we’ve gone 200-plus years of federal legislators going against the Tenth Amendment’s states’ rights. We are way overstepping bounds as federal legislators. So, bottom line, no we should not be passing laws as federal legislators—as senators or congressman—that the states would even consider

nullifying. **Bottom line.” Ernst**, a first-term state senator, has never explicitly supported pro-nullification legislation in her time in the Iowa state senate. However, she co-sponsored a resolution that says “the State of Iowa hereby claims sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States.” It was introduced in response to “many federal mandates [that] are directly in violation of the Tenth Amendment to the Constitution of the United States.” States cannot nullify federal laws, of course. **In**

embracing the concept of nullification, Ernst harkens back to a discredited theory that the Constitution is a compact and states are free to void federal laws that they dislike. This view was widely promoted by John Calhoun, the great Southern advocate of slavery, prior to the Civil War and was touted by segregationists in the 1950s and 1960s. In recent years, the idea was purged of its most racist overtones and fringe elements of the right adopted it as an argument against Obamacare, gun control, and other federal regulations. **As Erwin Chemerinsky**, a noted constitutional law scholar and Dean of the University of

California, Irvine Law School, told The Daily Beast, nullification is expressly forbidden under Article VI of the Constitution. “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof... shall be the supreme Law of the Land.” Chemerinsky also noted that the Supreme Court had dealt with this issue as recently as 1958, when in *Cooper v. Aaron*, a unanimous decision signed by every justice on the court, it was made clear that states could not nullify federal laws or Supreme Court decisions. Chemerinsky did point out that while “constitutional law doesn’t back up her rhetoric about the tenth amendment” in his opinion, it is something on which “people can have different views” and generally within the realm of acceptable discourse. **Historically**, the Tenth Amendment has been viewed as simply a basic statement of fact rather than something that explicitly grants power to the states. The best-known description of this comes from a unanimous Supreme Court decision in 1941 by Justice Harlan Stone in *United States v. Darby Lumber* where Stone wrote: **The amendment states but a truism that all is retained**

which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, **and that the states might not be able to exercise fully their reserved powers”**

However, conservatives opposed to a strong federal government have pushed for a more expansive interpretation of the Tenth Amendment in recent years. Some of these, known as Tenthers, have pushed model legislation, citing the amendment, which would allow states to nullify federal gun laws. **The Ernst campaign did not return a request for comment.**

A spokesman for the campaign of Ernst’s opponent, Democratic congressman Bruce Braley, said he agrees with Justice Stone’s understanding of the Tenth Amendment in *Darby Lumber*. **Ernst’s comments mark yet**

another chapter in what has been an ugly Senate campaign. Democrats have tried to depict her as an extremist and suggested that the Iowa state senator supports impeaching President Obama. In contrast, the Republicans have slammed Braley as being an out-of-touch liberal trial lawyer who is willing to sue his neighbors over minor squabbles and who looks down on those without advanced degrees. **The race is currently considered a tossup by outside**

observers and polling has Ernst and Braley in a dead heat.

Uniq: Fism Inevitable

Federalism is inevitably high—historical reforms and empirics prove

Montinola, Qian, and Weingast 13

(Gabriella—an Italian woman oooh, Yingyi—asian dude, Barry—aka strawberry, Word Politics, “Federalism, Chinese Style: The Political Basis for Economic Success“, http://scholar.google.com/scholar_url?hl=en&q=http://pages.ucsd.edu/~mnaoi/page4/PO LI227/files/page1_37.pdf&sa=X&scisig=AAGBfm2raBJxm6HvEaZngmalX5R-5dPfQ&oi=scholar, November 17 2013) Akshay Bapat

The remarkable success of China's economic reforms--fostering economic growth averaging 9 percent per year over the past fifteen years--seems to defy conventional wisdom. **Consider the following: --Economic reform appears to have been successfully pursued without any political reform.** --The central government seems to retain considerable political discretion, **including the ability to reverse suddenly the reform process or to impose onerous exactions on successful enterprises.** --**Finally**, there have been few attempts to provide the central feature of private markets, a system of secure private-property rights. Nor has an attempt been made to develop a commercial law (for example, property and contract law) **or an independent court system for adjudication.** **Each of these factors bodes ill for economic reform.** Without political reform, **economic returns remain at the mercy of political predation.** Political discretion, in turn, implies that there are no impediments to the government reversing the reforms. In this context, leadership turnover would allow the new government not only to reverse the reforms, **but also to confiscate considerable wealth and to punish those who were successful under the reforms.** Alternatively, problems may [End Page 50]occur during unexpectedly hard times. **With severe budget problems and a population clamoring for** "solutions, now," the immediate need for revenue produces powerful pressure for a partial or wholesale reversal of the reforms. This type of discretion typically kills the prospects of any reform program. **1 Because economic agents know in advance that political discretion affords no protection for their economic success,** they are unlikely to put their effort and wealth into undertakings that put them at risk, and hence the reforms will fail. These problems are seemingly further exacerbated in China by the lack of a system of private-property rights--a clear, **necessary condition for a successful market system.** All these factors point toward poor performance for Chinese economic reform. **The actual performance of the Chinese reforms provides a striking contrast to these expectations.** Over the past fifteen years, China's performance potentially parallels that of the other high-growth East Asian economies. The juxtaposition of the conventional wisdom with experience demands an explanation. The purpose of this paper is to provide such an explanation. We argue that the problem with the conventional wisdom is severalfold. First, **it provides too narrow a definition of political reform.** Second, although it asks the right question about political discretion, the inappropriate definition of political reform leads it to the wrong conclusion. Third, though much is wrong with the system of property rights in China, looking for a system of such rights as exists in the West has confused many analysts. Rights are not as secure in China as they could be, and the absence of a law of property and contracts along with a judicial system to enforce it remains a significant lacuna in the reform process. Yet, property rights are not completely insecure and without political foundation. Indeed, political reform in China has placed considerable limits on the discretion of the central government. These limits, **in turn**, provide the beginnings of a strong and credible political foundation for many market oriented enterprises throughout the successful regions of China. **To understand the basis for these claims,** we begin with the notion [End Page 51]of political reform. In the common parlance, political reform focuses on democratization and, hence, **the separation of the Chinese Communist Party (CCP) from the state.** **2 On this important component of reform,** China has made little progress. **Nearly all the formal aspects of democracy are absent,** notably, individual rights of free speech and political participation, **a viable system of competition for political office,** and a set of constitutional limits on the state. As democracy is one of the central aspects of political freedom, **China's record speaks for itself.** Yet, democratization does not encompass all aspects of political reform. So what has changed? We emphasize three principal factors. First, not only has political decentralization enhanced the powers of local government, but it has also altered central-local government relations in several critical ways that are difficult, though not impossible, to reverse. **3 Second,** a major shift in ideology underpins the reforms, with the CCP moving from a dogmatic emphasis on the Maoist version of Marxism-Leninism to a pragmatic, **market oriented approach.** Although the rhetoric of socialism has been retained (for example, **the**

recent emphasis on the "socialist market economy"), the staunch antimarket, **anti-private initiative**, anti-private gain focus has been removed. Third, China has for the first time under the communists opened its economy. **In our view, these changes have resulted in a new political system that we characterize as federalism**, Chinese style. This system, in turn, **provides considerable political protection for China's reforms**, including limits on the central government. **Viewed from the perspective of the individual**, this system differs considerably from federalisms in the developed West. **4 Viewed from the perspective of the political relationships among the different levels of government**, China's political decentralization shares much in common with Western federalisms. The modern Chinese system includes a division of authority between the central and local governments. The latter have primary control over [End Page 52] economic matters within their jurisdictions. Critically, there is an important degree of political durability built into the system. **As we argue, the Chinese system provides a partial basis for a special kind of federalism called market-preserving federalism. 5 Central to the success of market-preserving federalism is the element of political durability built into the arrangements**, meaning that the decentralization of power is not merely at the discretion of the central political authorities. **And here**, conventional wisdom's focus on the relationship between the national government and the individual results in erroneous judgments, for this focus ignores the relationship between the central authorities and the provincial and lower governments. **The latter relationships have not only changed dramatically**, but have done so in ways that are difficult to undo. They thus provide a degree of commitment. **Nonetheless**, the new economy is not without its limitations. An understanding of how China's current system differs from a more complete system of market-preserving federalism provides some guide to both its current problems and solutions to them. First, China lacks an adequate mechanism for policing the internal common market. This absence explains in part why many local governments have focused on trade barriers and aggressive antimarket policies within their jurisdiction. Second, political decentralization has yet to be institutionalized to ensure its long-term stability. A third problem is the absence of private property rights and a commercial law, as many have noted. **These limitations should not be seen as economically debilitating**; rather they should be seen as problems that need to be addressed in the near future. **This paper proceeds as follows. The next section discusses the theory of federalism and is divided into two parts. The first examines the necessary political foundations of marketpreserving federalism, while the second examines the economic consequences of federalism. Sections III and IV turn to federalism**, Chinese style, **paralleling the two parts of Section II. Section III discusses whether and how the conditions of market-preserving federalism hold in China. Section IV reveals the remarkable parallel between the predicted effects of market-preserving federalism and China's decentralization**. This approach also helps order the seemingly chaotic variety of behavior in the different provinces and localities. **Much of this variation**, especially the trends in [End Page 53]behavior, policy, **and economic outcomes, is as predicted by the theory of federalism. Several imperfections of the system are also noted**. Our conclusions follow in Section V. **II. The Theory of Market-Preserving Federalism Political Foundations of Market-Preserving Federalism A fundamental dilemma faces a government attempting to build and protect markets**: it must not only be strong enough to enforce the legal rights and rules necessary to maintain the economy, but it must also be strong enough to commit itself credibly to honoring such rules. **6 In the absence of credible limits on governmental behavior**, nothing prevents the government from taking away wealth from the citizens for its own purposes. **This behavior may take many forms**: an outright confiscation of wealth, onerous taxation, **or inflationary financing by printing money**. The absence of a credible commitment, in turn, **adversely affects the** "positive incentives" of economic agents. Because rational actors understand that this political environment reduces their economic benefits ex post, **they will withhold their efforts**, investments, and information ex ante, thus jeopardizing economic growth. Another form of the lack of commitment can be seen in a government that is unable to impose a "hard budget constraint" on itself and other economic agents. **7 In this case**, the government continues to bail out or subsidize troubled institutions and agents. **8 Lack of commitment fails to provide** "negative incentives" to economic institutions and agents, **who rationally distort their efforts**, typically leading to wasteful investment and low productivity. **Put simply**, the soft budget constraint eliminates the need for sensible planning, **since mistakes are not costly to the decision makers. 9 Reputation is often held as an important mechanism to achieve credible**

commitment, but it alone is hardly sufficient. Political institutions are also necessary because, in the appropriate form, they provide for a balance of power that can make commitment credible. **10 One set of political [End Page 54]institutions that play this role are those surrounding federalism. Understanding the implications of federalism requires a clear notion of how it is sustained, that is, of its political foundations. Most studies simply take federalism as an exogenously specified system, focusing on its effects. For the purposes of studying the consequences of federalism in the developed West (for example, in Switzerland or the United States), this often involves no great loss. For the purposes of implementing and perfecting a new system of federalism, however, an appreciation of its political foundations proves essential. The fundamental feature of federalism is decentralization; however, not all systems of decentralization are federal. To understand federalism, we must identify its principal characteristics. As a special type of federalism, market-preserving federalism encompasses a set of conditions that governs the allocation of authorities and responsibilities among different levels of government: **F1**. A hierarchy of governments with a delineated scope of authority (for example, between the national and subnational governments) exists so that each government is autonomous within its own sphere of authority. **F2**. The subnational governments have primary authority over the economy within their jurisdictions. **F3**. The national government has the authority to police the common market and to ensure the mobility of goods and factors across subgovernment jurisdictions. **F4**. Revenue sharing among governments is limited and borrowing by governments is constrained so that all governments face hard budget constraints. **F5**. The allocation of authority and responsibility has an institutionalized degree of durability so that it cannot be altered by the national government either unilaterally or under the pressures from subnational governments. These conditions represent an ideal type of institutional arrangement of a market-preserving federalism. The purpose of these institutions is, in part, to limit the degree to which a political system can encroach on markets. **11 Condition 1 contains the defining characteristic of federalism**. But formalized decentralization alone does not generate federalism's market-preserving qualities. These require the addition of conditions 2-5. From the perspective of preserving market incentives, the authority of the national government over markets is limited to policing the common market across regions (**condition 3**) and providing national public goods, which should not be left to the subnational level governments (for example, monetary policy). **[End Page 55] The institutional arrangements of federalism recognize a critical difference between the national government and the subnational governments**: there is only one of the former but many of the latter. The natural limits on the discretionary authority of the subnational level governments are induced by competition among jurisdictions. But this competition is beneficial only if there are no trade barriers and the entire nation becomes a common market (condition 3). Without condition 3, each subnational government would become something of a de facto "national government" in its jurisdiction, and its discretionary authority over the economy again would limit its ability to make a credible commitment. **Condition 2 thus enhances the effects of condition 3**. If decentralization remained at the discretion of the national government, the latter could intervene in the economy first by using its discretion (in the absence of condition 2) to compromise the system of federalism and then to intervene. The constraint of condition 4 has two parts, one for fiscal revenue transfers between levels of governments, and one for borrowing through the financial system. The hard budget constraint in the fiscal channel limits revenue sharing and equalization among governments, especially through soft grants. The hard budget constraint in the financial channel restricts open-ended access to capital markets, especially borrowing from the central bank. Condition 4 applies to both the national government and the subnational governments. A hard budget constraint for the latter is necessary because it directly ties local revenue to local economic prosperity. A local government's financial problems remain its own, providing important incentives for local officials to oversee and ensure their government's fiscal health. If, in contrast, local governments were readily bailed out of their financial problems, they would have considerably fewer incentives to worry about the consequences of their choices. The constraint on the national government is necessary in part because a soft budget constraint would allow it to use monetary discretion to get around the limits on its authority. Condition 5 provides for credible commitment to the federal system and thus for limits on the national government's discretionary authority. Not only must there be decentralization, but that decentralization must not be under the discretionary control of the national government. Condition 5 addresses the enforcement problem and is critically important. It is also likely, however, that an individual country, due to its own unique history and complicated social conditions, may require a different arrangement. Market-preserving federalism's balance of power between the national [End Page 56]and subnational governments is superior to either a complete centralization with a unitary government or a complete decentralization with each region an independent state. Under**

complete centralization or decentralization, the national government's authority is not limited through internal institutional arrangements; hence a potential danger exists for the discretionary authority to encroach on markets. **Before turning to the economic implications of market-preserving federalism, we pause to discuss the relationship between the conditions underlying market-preserving federalism and various systems of federalism throughout the world. Our approach shows that whether a nation calls itself federal--"de jure federalism"--is irrelevant.**

12 What matters is whether the various conditions hold. Many de jure federalisms are nothing like market-preserving federalisms, for example, in Argentina, Brazil, and India. In these cases, conditions 2 and 5, **and often condition 4**, fail. The failure of conditions 2 and 5 implies that the political discretion and authority retained by the central government in these systems greatly compromises their market-preserving qualities. As discussed later in this section, these conditions are a necessary component of federalism's market-preserving qualities. **The contrast between market-preserving federalism and the decentralization of the former Soviet Union is also instructive.** The Soviet system was characterized by administrative decentralization without authority. Lower governments were largely administrative units of the central government with little autonomous political power, **let alone power over their local economies.** The center also carefully controlled factor mobility. Hence, **all but condition 1 failed in that system.**

Uniq: No Fism Now – Fed Axn

Impact non UQ- increased federal action in the squo proves

Dinan and Gamkhar 9 (John, Professor of Government-Wake Forest and Shama, Professor of Public Affairs-University of Texas, “The State of American Federalism 2008–2009: The Presidential Election, the Economic Downturn, and the Consequences for Federalism”, Publius the Journal of Federalism, <http://publius.oxfordjournals.org.proxy.lib.umich.edu/cgi/content/full/39/3/369>) In each of these areas, it was widely expected that **the federal government would be the chief actor, largely because of the national scope of the problems and greater resources and capacities of the federal government.** It is true that a number of state governments took action in response to the mortgage foreclosure problem. And of course state officials were tasked with responding to their own budget deficits caused to a great degree by the economic downturn. For the most part, **however, the federal government was the primary actor in responding to many of these economic problems, with federal policy-makers undertaking a series of sustained and aggressive interventions.** This activity was capped by the February 2009 passage of a stimulus package that the New York Times **described** on the day of its passage as **“a striking return of big government”** (Herszenhorn 2009). And this was **followed by Obama's unveiling later in the month of his housing plan,** a \$275 billion measure whose centerpiece is a \$75 billion investment—drawn from the financial industry bailout funds—that would be dedicated to keeping homeowners in their houses. Moreover, **momentum began to build for still other federal government action regarding additional financial sectors, especially banks, mortgage brokers, and insurance companies, the latter of which have traditionally been regulated primarily by state governments** (Ehrenhalt 2008). Bush's Treasury Secretary Henry Paulson announced a reform blueprint in March 2008 that would have reconfigured the complex system and various agencies responsible for regulating banks (Kettl 2008). During his confirmation hearings, Obama's Treasury Secretary Timothy **Geithner promised new federal regulations** of mortgage brokers, who have long been regulated primarily by the states (Labaton 2009). Some **members of Congress** also **advanced yet another round of proposals for federal regulation** of the insurance industry, which Congress has long permitted to be regulated at the state level but has revisited periodically (Calmes 2008). In March 2009, Geithner **unveiled a comprehensive plan to tighten federal financial regulation. The plan envisions a new federal authority**—an as yet unidentified “systemic risk regulator”—to oversee institutions considered “too big to fail.” He called on congress to empower federal officials to take control of and restructure non-bank financial entities (hedge funds and private equity firms) that are typically designed to operate outside of regulatory structures; they would have to register with the Securities and Exchange Commission and disclose information about their risk management practices. The plan also seeks for the first time to regulate derivative instruments such as credit default swaps, which were seen by financial analysts as contributing significantly to the need for a federal bailout of American International Group (AIG) and Bear Stearns. **Geithner also urged broad federal regulation** of corporate executive compensation and not only for firms receiving federal bailout money (Andrews 2009).

Uniq: No Fism Now

Policy makers are shifting away from federalism in the status quo

Edwards 13 (Chris, “Fiscal Federalism”, The director of tax policy studies at Cato, He is a top expert on federal and state tax and budget issues. Before joining Cato, Edwards was a senior economist on the congressional Joint Economic Committee, a manager with PricewaterhouseCoopers, and an economist with the Tax Foundation, June, http://www.downsizinggovernment.org/sites/downsizinggovernment.org/files/pdf/fiscal-federalism_0.pdf)

The federal government has developed a hugely complex financial relationship with state governments through the grants-in-aid system. **The system has grown steadily for more than a century as the federal government has become involved in an increasing array of state and local activities.** Today there are more than 1,100 different federal aid programs for the states, with each program having its own rules and regulations. **The system is a complicated mess, and it is getting worse all the time.** It wasn't supposed to be this way. Under the U.S. Constitution, the federal government was assigned specific, limited powers and most government functions were left to the states. To ensure that people understood the limits on federal power, the nation's founders added the Constitution's Tenth Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The Tenth Amendment embodies federalism, the idea that federal and state governments have separate areas of activity and that federal responsibilities were “few and defined,” as James Madison noted. Historically, federalism acted as a safeguard of American freedoms. President Ronald Reagan noted in a 1987 executive order, “Federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government.”¹ **Unfortunately, policymakers and courts have mainly discarded federalism** in recent decades. Congress has undertaken many activities that were traditionally reserved to the states and the private sector. **Grants-in-aid are a key mechanism that the federal government has used to extend its power into state and local affairs.** Grant programs are subsidies that come part and parcel with **federal regulations designed to micromanage state and local activities.** The federal government will spend \$561 billion on aid to the states in 2013, making aid the third largest item in the federal budget after Social Security and national defense.² Some of the major federal aid programs are in the areas of education, health care, housing, and transportation. **There are few, if any, advantages of federalizing state and local activities through grant programs, but many disadvantages. The aid system encourages excessive spending and bureaucratic waste, creates a lack of political accountability, and stifles policy diversity and innovation in the states. With the ongoing flood of red ink in Washington, now would be a good time to begin cutting the vastly overgrown grants-in-aid system.**

Impact non UQ- increased federal action in the squo proves

Dinan and Gamkhar 9 (John, Professor of Government-Wake Forest and Shama, Professor of Public Affairs-University of Texas, “The State of American Federalism 2008–2009: The Presidential Election, the Economic Downturn, and the Consequences for Federalism”, *Publius the Journal of Federalism*, <http://publius.oxfordjournals.org.proxy.lib.umich.edu/cgi/content/full/39/3/369>)

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Federal spending power prevents federalism

Baker 1 (Lynn, Thomas Watt Gregory Prof. @ UT School of Law, Social Science, march, “Conditional Federal Spending and States’ Rights”,

<http://www.jstor.org/discover/10.2307/1049058?uid=3739728&uid=2129&uid=2&uid=70&uid=4&uid=3739256&sid=21104012161071>.)

[*105] AMIDST all the attention afforded the Supreme Court's recent federalism decisions, one important fact has gone largely unnoticed: **the greatest threat to state autonomy is, and has long been, Congress's spending power.** No matter how narrowly the Court might read Congress's powers under the commerce clause and Section 5 of the Fourteenth Amendment, and **no matter how absolute a prohibition the Court might impose on Congress's "commandeering" of state and local officials, the states will be at the mercy of Congress so long as Congress is free to make conditional offers of funds to the states that, if accepted, regulate the states in ways that Congress could not directly mandate.** n1 THE CASE LAW On several occasions beginning in 1923, the Court has explicitly stated that a conditional offer of federal funds to the states is constitutionally unproblematic because it "imposes no obligation but simply extends an option which the State is free to accept or reject." n2 Because a state has "the 'simple expedient' of not yielding to what she urges is federal coercion," n3 the Court has concluded that "the powers of the State are not invaded" n4 and there is no Tenth Amendment violation. In its 1987 decision in *South Dakota v. Dole*, the Court made clear that conditional federal spending affords Congress a seemingly easy end run around any restrictions the Constitution might be held to impose on Congress's ability to regulate the states. The *Dole* Court reaffirmed both that "objectives not thought to be within Article I's 'enumerated legislative fields' . . . may nevertheless be attained through the use of the spending power and the conditional grant of federal funds" n5 and that the "Tenth Amendment limitation on congressional regulation of state affairs [does] not concomitantly limit the range of conditions legitimately placed on federal grants." n6 The Court cautioned that "the spending power is of course not unlimited . . . but is instead subject to several general restrictions articulated in our cases." n7 Unfortunately, none of the stated restrictions was portrayed as having much bite. **The most promising constraints on conditional federal spending noted by the *Dole* Court were a "germaneness" requirement and a "coercion" threshold.** With regard to "germaneness," the Court observed that "conditions on federal grants might be illegitimate if they are unrelated 'to the federal interest in particular national projects or programs,'" but added that this restriction was merely "suggested (without significant elaboration)" by prior cases. n8 With regard to "coercion," the Court opined that "in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion.'" n9 The Court concluded that a threatened loss to states of 5 percent of their otherwise [*106] obtainable allotment of federal highway funds, for example, did not pass this critical point, but the Court did not suggest what percentage of these (or any other) funds might. n10 For those who lament the fact that any constitutional limits on Congress's regulatory powers can apparently be circumvented through combined use of the taxing and spending powers, *Dole* leaves three important issues unresolved. First, **although the *Dole* Court suggested that the spending clause did not authorize Congress either to coerce the states unduly n11 or to impose conditions "unrelated 'to the federal interest in particular national projects or programs,'" n12 it provided neither a workable definition of these critical "coercion" and "germaneness" standards nor any actual or hypothetical example of their violation.** Second, **the *Dole* Court attempted no answer to the**

central normative question raised by its suggestion that there are limits on Congress's power to offer the states conditional funds: why should Congress not be able to attach any conditions it chooses to the federal funds it offers the states? As the Court itself has repeatedly observed, a state is always free to decline an offer of federal funds that it finds unattractive. n13 Why, then, is additional, judicial protection needed to ensure the states' autonomy? Third, to the extent that Dole would relegate control over conditional federal spending to the federal political process, one might question the ability of the states to protect themselves from Congress within that process.

Fism != Decentralization

Federalism isn't the same as decentralization

Radio Tamazuj, 14

(“Federalism 'not the same as Kokora', says scholar”,

<https://radiotamazuj.org/en/article/federalism-not-same-kokora%E2%80%99-says-scholar>, July 7 2014) Akshay Bapat

A leading scholar of South Sudanese affairs said Saturday that federalism is not the same as Kokora. **Giving a lecture on federalism during a debate at Juba University**, Dr Douglas Johnson of the Rift Valley Institute said that Kokora should not be considered as a system of government. **“Let us be clear, Kokora is not the same as federalism,” Johnson said. Federalism is a government system that splits powers between a central authority and state governments.** Kokora was a movement of Equatorian particularism in the early 1980s at a time when South Sudan was divided into three separate political regions. Many southern Sudanese from greater Bahr el Ghazal and Upper Nile regions were forcefully evicted from Equatoria during Kokora. Leaders of Equatoria and Riek Machar's SPLA-In Opposition support federalism while President Salva Kiir and some politicians from the Bahr el Ghazal states are opposed to the system, saying it is a repeat of Kokora. **Government officials**, diplomats, civil society groups, political parties, and students attended the university debate, which was moderated by Dr Luka Biong, former South Sudan Minister in the office of the President. **Johnson said federalism has been misunderstood and misinterpreted because of the way Kokora was applied at the start of Sudan's Second Civil War.** He said those who lived through that movement and were pushed out of Equatoria have reason to be suspicious of a new Kokora, though he added that Kokora did not result in the creation of a separate federal region in Equatoria or any other South Sudanese region. **In a keynote address**, Johnson said that the federalism debate in South Sudan has been complicated by the ongoing crisis here. He said one side has adopted federalism as a political platform while the other side views it as a version of disloyalty. **He said there needs to be formal and open discussions among South Sudanese citizens about federalism so that people can understand what federalism might mean and decide if they support it. “If we can learn anything from past history of South Sudanese political thought, it is that federalism means many things,” Johnson said.** He said the term can describe a highly centralized government system as well as more radical devolution projects. **Johnson said the federation of Sudan in 1957 was meant to create concurrent central and state governments along the principles of federalism.** **Another participant at the debate**, Western Equatorian legislator Daniel Isbone Zingifuaboro, **said that federalism is the division of power**, not the division of people. **He said that federalism does not make villages into states**, or give power over states to ethnic groups. **Zingifuaboro said that federalism is also not the same as decentralization.** A federal system, he said, is when people give power to local authorities, for example through voting. Decentralization, on the other hand, means the central government devolves its own powers to the local levels. **South Sudan's current government is nominally ‘decentralized’ rather than federal.** The national government in Juba has wide-ranging powers over state and even local governments. Four of the ten state governors, for example, are appointees of the president and were not elected. **A poll taken 15 December 2013 by Dr Jaafar Karim Juma Mori**, head of the department of statistics and demography at found that 67% of university students in Juba were in favor of federalism and 33% were against. **Greater Equatorian university students reported the highest levels of support for federalism with 87.8% in favor of the system**, whereas Bahr el Ghazal University students were most opposed, with only 18.2% in favor. **40% of Upper Nile University students supported federalism.**

Impacts

AT: Modeling

The American Dream is fading and countries don't want to model

Moravcsik 05

[Andrew Moravcsik, Professor of Politics at Princeton University. "Dream On, America." Published January 2005]// GD

ECONOMIC PROSPERITY: The American Dream has always been chiefly economic a dynamic ideal of free enterprise, free markets and individual opportunity based on merit and

mobility. Certainly the U.S. economy has been extraordinarily productive. Yes, American per capita income remains among the world's highest. Yet these days there's as much economic dynamism in the newly industrializing economies of Asia, Latin America and even eastern Europe. All are growing faster than the United States. At current trends, the Chinese economy will be bigger than America's by 2040. Whether those trends will continue is not so much the question. Better to ask **whether the American way is so superior that everyone else**

should imitate it. And the answer to that, increasingly, is no. Much has made, for instance, of the differences between the dynamic American model and the purportedly sluggish and overregulated "European model." Ongoing efforts at European labor-market reform and fiscal cuts are ridiculed. Why can't these countries be more like Britain, businessmen ask, without the high tax burden, state regulation and restrictions on management that plague Continental economies? **Sooner or later, the CW goes, Europeans will**

adopt the American model or perish. Yet this is a myth For much of the postwar period Europe and Japan enjoyed higher growth rates than America. Airbus recently overtook Boeing in sales of commercial aircraft, and the EU recently surpassed America as China's top trading partner. This year's ranking of the world's most competitive economies by the World Economic Forum awarded five of the top 10 slots including No. 1 Finland to northern European social democracies. "Nordic social democracy remains robust," writes Anthony Giddens, former head of the London School of Economics and a "New Labour" theorist, in a recent issue of the New Statesman, "not because it has resisted reform, but because it embraced it." This is much of the secret of Britain's economic performance as well. Lorenzo Codogno, co-head of European economics at the Bank of America, believes the British, like Europeans elsewhere, "will try their own way to achieve a proper balance." Certainly they would never put up with the lack of social protections afforded in the American system. **Europeans are aware that their systems provide**

better primary education, more job security and a more generous social net. They are willing to pay higher taxes and submit to regulation in order to bolster their quality of life. Americans work far longer hours than Europeans do, for instance. But they are not necessarily more productive nor happier, buried as they are in household debt, without the time (or money) available to Europeans for vacation and international travel. George Monbiot, a British

public intellectual, speaks for many when he says, **"The American model has become an American nightmare rather than an American dream."** Just look at booming Britain. Instead of cutting social welfare, Tony Blair's Labour government has expanded it. According to London's Centre for Policy Studies, public spending in Britain represented 43 percent of GDP in 2003, a figure closer to the Eurozone average than to the American share of 35 percent. It's still on the rise some 10 percent annually over the past three years at the same time that social welfare is being reformed to deliver services more efficiently. **The**

inspiration, says Giddens, comes not from America, but from social-democratic Sweden, where universal child care, education and health care have been proved to increase social mobility, opportunity and, ultimately, economic productivity In the United States, inequality once seemed tolerable because America was the land of equal opportunity. But this is no longer so. Two decades ago, a U.S. CEO earned 39 times the average worker; today

he pulls in 1,000 times as much. Cross-national studies show that **America has recently become a relatively difficult country for poorer people to get ahead** Monbiot summarizes the scientific data: "In Sweden, you are

three times more likely to rise out of the economic class into which you were born than you are in the U.S." **Other nations have begun to notice. Even in poorer, pro-American Hungary and Poland, polls show that only a slender minority** (less than 25 percent) **wants to import the American economic**

model. A big reason is its increasingly apparent deficiencies. "Americans have the best medical care in the world," Bush declared in his Inaugural Address. Yet the United States is the only developed democracy without a universal guarantee of health care, leaving about 45 million Americans uninsured. Nor do Americans receive higher-quality health care in exchange. Whether it is measured by questioning public-health experts, polling citizen satisfaction or survival rates, the health care offered by other countries increasingly ranks above America's. U.S. infant mortality rates are among the highest for developed democracies. The average Frenchman, like most Europeans, lives nearly four years longer than the average American. Small wonder that the World Health Organization rates the U.S. healthcare system only 37th best in the world, behind Colombia (22nd) and Saudi Arabia (26th), and on a par with Cuba. **The list goes on: ugly racial tensions, sky-high incarceration rates,**

child-poverty rates higher than any Organization for Economic Cooperation and

Development country except Mexico where Europe, these days, inspires more

admiration than the United States "Their solutions feel more natural to Mexicans because they offer real solutions to real, and seemingly intractable, problems," says Sergio Aguayo, a prominent democracy advocate in Mexico City, referring to European education, health care and social policies. And while **undemocratic states like China may, ironically, be among the last places where the United States still presents an attractive political and social alternative to authoritarian government, new models are rising in prominence.** Says Julie Zhu, a college student

in Beijing: "When I was in high school I thought America was this dreamland, a fabled place." Anything she bought had to be American. Now that's changed, she says: "When people have money, they often choose European products." She might well have been talking about another key indicator.

Not long ago, the United States was destination number one for foreign students seeking university educations. Today, growing numbers are going elsewhere to other parts of Asia, or Europe. You can almost feel the pendulum swinging.

Countries won't model America

Moravcsik 05 [Andrew Moravcsik, Professor of Politics at Princeton University. "Dream On, America." Published January 2005] // GD

AMERICAN DEMOCRACY: **Once upon a time, the U.S. Constitution was a revolutionary document**, full of epochal innovations—free elections, judicial review, checks and balances, federalism and, perhaps most important, a Bill of Rights. In the 19th and 20th centuries, countries around the world copied the document, not least in Latin America. So did Germany and Japan after World War II. Today? **When nations write a new constitution, as dozens have in the past two**

decades, they seldom look to the American model. When the Soviets withdrew from Central Europe, U.S. constitutional experts rushed in. They got a polite hearing, and were sent home. Jiri Pehe, adviser to former president Vaclav Havel, recalls the Czechs' firm decision to adopt a European-style parliamentary system with strict limits on campaigning. **For Europeans, money talks too much in American democracy. It's very prone to certain kinds of corruption, or at least influence from powerful lobbies,** he says. **Europeans would not want to follow that route.** They also sought to limit the dominance of television, unlike in American campaigns where, Pehe says, "TV debates and

photogenic looks govern election victories." So it is elsewhere. **After American planes and bombs freed the country, Kosovo opted for a European constitution.** Drafting a post-apartheid constitution, **South Africa rejected American-style federalism in favor of a German model,** which leaders deemed appropriate for the social-welfare state they hoped to construct. **Now fledgling African democracies look to South Africa as their inspiration, says John Stremlau, a former U.S. State Department official who currently heads the international relations department at the University of Witwatersrand in Johannesburg: "We can't rely on the Americans."** The new

democracies are looking for a constitution written in modern times and reflecting their progressive concerns about racial and social equality, he explains.

"To borrow Lincoln's phrase, South Africa is now Africa's 'last great hope'." **Much in American law and society**

troubles the world these days **Nearly all countries reject the United States' right to bear arms as a quirky and dangerous anachronism. They abhor the death penalty and demand broader privacy protections.** Above all, **once most foreign systems reach a reasonable level of affluence, they follow the Europeans in treating the provision of adequate social welfare as a basic right. All this,** says Bruce Ackerman at Yale University Law School, **contributes to the growing sense that American law, once the world standard, has become "provincial."** The United States' refusal to apply the Geneva Conventions to certain terrorist suspects, to ratify global human-

rights treaties such as the innocuous Convention on the Rights of the Child or to endorse the International Criminal Court (coupled with the abuses at Abu Ghraib and Guantanamo) only reinforces the conviction that America's Constitution and legal system are out of step with the rest of the world.

Fism Resilient

Federalism is resilient and flexible

Larry Greston 7. San Jose St-Politics, American Federalism: A concise introduction, p. 13-4. GD

To be sure, **over the past two hundred twenty years, the powers of some institutions have been clarified, while the resources of others have evolved considerably.** Even more remarkable, **some power relationships have shifted over time, revealing a profound flexibility within the American government framework.** More times than not, **such shifts in power have not occurred with unanimity.** In fact, great debates over the appropriate assignments of government functions continue to this day. Nevertheless, **the basic elements of American federalism remain in place, even if the applications are different.** And other than the Civil War nearly one hundred and fifty years ago, the political “operating system” of the nation has functioned without serious bloodshed. **Along with resilient adaptability, American federalism has demonstrated a great sense of continuity.**

Structural checks make federalism resilient

Ernest Young 2003. Professor of Law at Texas, Texas Law Review, May. GD

One of the privileges of being a junior faculty member is that senior colleagues often feel obligated to read one's roughdrafts. On many occasions when I have written about federalism - from a stance considerably more sympathetic to the States than Judge Noonan's - my colleagues have responded with the following comment: **"Relax. The States retain vast reserves of autonomy and authority over any number of important areas. It will be a long time, if ever, before the national government can expand its authority far enough to really endanger the federal balance. Don't make it sound like you think the sky is falling."**

AT: Devolution

Devolution leads to ethnic violence

D. Lake, Political Science Professor, 1998 (THE INTERNATIONAL SPREAD OF ETHNIC CONFLICT, Ed. D. Lake, p. 8)

When central authority declines, groups become fearful for their survival. They **invest in and prepare for violence, and thereby make actual violence possible.** Whether arising incrementally out of competition between groups or from extremist factions actively seeking to destroy ethnic peace, **state weakness is a necessary precondition for violent ethnic conflict to erupt.**

AT: Terrorism

Terrorists don't care about federalism

Ann Althouse, University of Wisconsin Law School Professor, 2004 (Brooklyn Law School, 69 Brooklyn L. Rev. 1231, Summer) p. 1273

Over the course of United States history, conditions have changed, **causing people to look more and more to the national government for solutions to modern-day problems**. It

would seem that the war on terrorism can only increase the demand for the national government to extend its reach into more and more aspects of American life. **One might well predict**, then, **that the war on terrorism will finish**

off the Rehnquist Court's federalism revival: Federalism neurotics ⁿ¹⁴¹ will **need to**

snap out of their nostalgia and face the hard realities of a brutally changed world

What can survive of the Madisonian "double security . . . to the rights of the people"? **How can the states play an important role in controlling abuse by the federal government when we are forced to look to the federal government to deal with such monumental threats?**

AT: War

Federalism does not work to solve conflicts

John Warren McGarry and Brendan O'Leary. Jan 1994. "The political regulation of national and ethnic conflict." Parliamentary Affairs v47.n1 pp94(22).

Unfortunately, **federalism has a poor track record as a conflict-regulating device in multi-national and polyethnic states**, even where it allows a degree of minority self-government. Democratic federations have broken.... **Federal failures have occurred because minorities continue to be outnumbered at the federal level of government**. The **resulting frustrations**, combined with an already defined boundary and the significant institutional resources flowing from control of their own province or state, **provide considerable incentives to attempt secession, which in turn can invite harsh responses from the rest of the federation**... genuine democratic federalism is clearly an attractive way to regulate national conflict, with obvious moral advantages over pure control. The argument that it should be condemned because it leads to secession and civil war can be sustained only in three circumstances: first, if without federalism there would be no secessionist bid and, second, if it can be shown that national or ethnic conflict can be justly and consensually managed by alternative democratic means; and third, if the secessionist unit is likely to exercise hegemonic control (or worse) of its indigenous minorities.

Specific Aff Stuff

OSW

Federal action is key to offshore wind

Kennedy 7/1

[Kit Kennedy in 2007, She left NRDC to become head of the Environmental Protection Bureau at the New York State Attorney General's Office. She had the privilege to serve the Attorney General and the State of New York for three years, and to work on a diverse and challenging set of environmental issues across New York State and nationally. She recently returned to NRDC to help move forward our clean energy and global warming agenda at the federal level. "Strong Federal Endorsement Could Spur First U.S. Offshore Wind Farm to Begin Construction This Year" July 1, 2014

http://switchboard.nrdc.org/blogs/kkenedy/strong_federal_endorsement_cou.html] JAKE LEE

News out today from the **federal Department of Energy suggests a promising future for U.S. offshore wind power. The agency announced it is backing the Cape Wind project in Massachusetts—long expected to be the nation's first utility-scale offshore wind farm—with a \$150 million loan guarantee.**¶ This move is a vote of confidence for the project that is slated to be built in Nantucket Sound and could provide enough pollution-free power to meet 75 percent of the electricity demand on Cape Cod and the islands of Martha's Vineyard and Nantucket, as well as create up to 1,000 jobs in the state. **The boost from DOE is key to securing full financing for Cape Wind, as its developers will be able to leverage this sizeable investment and definitive vote of confidence to attract the remaining private capital they need to get the project built. ¶ Europe already gets more than 6.5 gigawatts of power from offshore wind farms. Today's announcement of a Department of Energy loan guarantee for the Cape Wind offshore wind power project moves the U.S. closer to our international competitors in harnessing offshore wind power's impressive potential.** (photo: Kim Hansen)¶ **The Cape Wind project has been a long time coming. Over the past decade, it has cleared two full federal environmental reviews, along with multiple state and local environmental reviews and approvals.** (By comparison, a traditional coal power plant typically gets approval in just two years.) During that time it has also survived more than a dozen legal challenges brought by Bill Koch-funded opponents that were aimed at blocking it; all of them ultimately failed. (Bill Koch, a sibling of the notorious Charles and David Koch who've bankrolled attacks on clean energy across the country, is a billionaire fossil-fuel magnate in his own right.)¶ **With all of this now largely in the rearview window and today's boost from DOE, the Cape Wind project could finally begin construction before the end of this year.**¶ That's welcome news. For too long, the U.S. has been lagging behind other parts of the world on offshore wind. In Europe alone, the industry already employs some 58,000 people, with close to 70 projects that provide more than 6.5 gigawatts of power. China and Japan are getting in on the action, too. Cape Wind can be the first to start turning that tide. And, with a dozen other U.S. wind projects in the pipeline, the next generation will not be far behind. That's good news for the economy, with the industry predicted to be able to employ as many as 43,000 workers nationwide and provide cost-competitive electricity by 2030 here at home. ¶ In offering this guarantee, DOE is further demonstrating its faith in American offshore wind power. **The agency has been a leader in the field, collaborating with the Department of the Interior on its Smart from the Start program to fast-track leasing of federal offshore parcels in ways that helps ensure the protection of vulnerable sea life. Its grants to innovative, demonstration offshore wind power projects will drive down costs, improve performance, and make the technology easier to install.**¶ In addition to all of the industry-boosting, job-creating benefits, with the

summer just starting up it's an appropriate time to note one of offshore wind's greatest selling points: **It produces the most power when demand for that power is usually highest—for example, on these hot summer afternoons, when rising temperatures and the energy demands that rise with them currently bring online the most expensive and polluting power plants.** **With offshore wind farms like Cape Wind,** we can disrupt that process, replacing dirty fuels with clean, renewable energy and avoiding grid congestion to boot. That can help improve summer air quality, prevent blackouts and combat climate change all at the same time.¶ Today, **NRDC congratulates Cape Wind and the Department of Energy for their big accomplishment, moving this exciting clean-energy source forward, together. We are now that much closer to moving American offshore wind power from the drawing boards to our blustery coasts.**

CZMA

States fail—projects in the CZMA fail

Schroeder 10

[Erica Schroeder is a J.D., University of California, Berkeley, School of Law “TURNING OFFSHORE WIND ON” October 2010

<http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1069&context=californialawreview>] JAKE LEE

Once the Secretary of Commerce has determined that a state has given "adequate consideration" to the "national interest" in its CZMP, the federal government no longer has control over energy facility development in state waters.²³⁴ Thus coastal states can block proposed turbines in state waters and proposed transmission lines from offshore turbines proposed for federal waters. Or, as in the Cape Wind saga, most of which occurred before the Oceans Act was passed, states can simply not encourage, or even address, renewable energy production, giving proponents no mandate to rely on in litigation and administrative processes. In a more extreme situation, through federal consistency review, a coastal state retains a "reverse-preemption power" for federal projects and permits in state and federal waters, as long as these projects affect the state's coastal zone.²³⁵ Therefore, as projects outside of a state's CZMP will frequently impact a state's coastal zone, states can also potentially block permitting and/or construction of turbines not only in their coastal zones, but also in federal waters outside of their CZMP's jurisdiction. Through these two mechanisms—state CZMPs and federal consistency review—local interests focused on local costs in coastal states can stall or block offshore wind power development, despite compelling national and global reasons to promote it. The CZMA offers no support to counteract this local opposition, such as a pro-offshore wind federal mandate

Impact Turns: Fism Bad

Federalism Bad—Ethnic Conflict/ Genocide

Federalism sparks genocide

Mutunga 01 [Willy Mutunga is the Executive Director of the Kenya Human Rights Commission “Is Majimbo Federalism? Constitutional Debate in a Tribal Shark-Tank” May 20 2001 <http://www.hartford-hwp.com/archives/36/136.html>] JAKE LEE

Federalism promotes localism, ethnic and racial xenophobia and undermines the sense

of nationhood. **Unsurprising the United States and Nigeria are living survivors of debilitating separatist wars between their regions; India, despite its federal miracle still bleeds** from secessionist movements. The introduction of **ethnic-based 'quasi-regionalism' in post-**

Mengistu Ethiopia has fuelled the conflict over the proposed Oromia state by members of the Oromo ethnic population.¶ Majimboism in the early 1960s had let off the lid of secessionist movements, particularly by Kenyan

Somalis in North Eastern Province and the clamour for an autonomous "**Mwambao**" on the Coast. **There is no guarantee that this time around, majimboism will not trigger ethnic recidivism** and separatist movements, especially in North Eastern, Coast and Eastern province **where the Oromo population** may

lean towards the movement for an Oromia state.¶ **Federalism's main weakness is that it is a very expensive system that duplicates services and office holders at the regional and federal levels.** It lacks uniform policies on such issues of national concern as laws regulating marriages, **divorce,**

abortions, liquor, voting rights and public education. Rather than ensuring economic equity, as many proponents of majimboism assume, it sets those regions, states or cantons with a weak market-base, capital, and resources down **the spiral of economic decline. It subjects local governments to double subordination-by the central and regional governments-and the citizens to triple taxation. At a time when the country's economy is on its knees, the feasibility of a well-financed transition is highly doubtful.**

Federalism Bad AT: Yemen Terrorist Scenario

Federalism Crushes the war on terror—makes terrorism attack inevitable

Rubin 12 [Edward Rubin is Professor of Law at Penn, Jan, “Federalism Won’t Work,”

July 2, 2013 <http://www.bostonreview.net/forum/right-fight/federalism-wont-work>] JAKE

LEE

Richman is certainly correct to suggest that this approach is counterproductive, and that national-security agencies should develop more-cooperative relationships, particularly with local authorities. But his effort to link this proposal to the spirit of federalism is misplaced. **The fragmentation of government encouraged by federalist rhetoric has led**

to inefficient duplication of facilities and a lack of coordination at the national level. The FBI was created as a partial solution to these problems, but without a truly national approach, they have persisted and will continue to do so.¶

Moreover, **federalism** does not establish or encourage the respect for local authorities that Richman urges. It **grants legal rights to states and declares, as a subsidiary premise, that local governments, as creatures of states, possess no legal status of their own. A structure of this sort impedes the important relationship between the national government and local governments, subjecting these local governments to unnecessary state control. The problem is particularly serious for America’s large cities, whose economies, social services, and security are of national concern but which regularly find themselves constrained by rurally oriented state governments that are hostile to their interests. Faced with these impediments to a direct relationship with city governments, it is not surprising that the national government has tried to do things on its own.**

Federalism is not the solution to this problem but one of its principal causes. If we want better coordination of anti-terrorist activities between the national government and the cities, we need to abandon our outmoded federalist rhetoric and develop a coherent, coordinated approach to the relationship between national and local governments.

Federalism Bad- Laundry List

Federalism is bad- causes natural disasters, disease and terrorism

Griffin 7 [Stephen Griffin is a Professor in Constitutional Law, Tulane School, "Stop

Federalism Before It Kills Again: Reflections on Hurricane Katrina" Spring 2007

<http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1093&context=jcred>] JAKE LEE

And so it is **still the case that when natural disasters strike**, the divided power of the federal

structure presents a coordination problem. The kind of coordination that had to occur to avoid the Katrina disaster requires long-term planning before the event.

The American constitutional system makes taking intergovernmental action difficult and complex. The process of coordinating governments can take years. **In many ways, the government was just at the beginning of that process at the time of Katrina,**⁴⁸ although we are now four years distant from the **terrorist attacks of September 11, 2001** that set the latest round of disaster coordination in motion.

Suppose, however, that we don't have the luxury of taking the time to satisfy every official with a veto. This is the key point of tension between what contemporary governance demands and what the Constitution permits. The kind of limited change that occurred in 1927 can take us only so far. What Hurricane Katrina showed was that even after decades of experience with natural disasters, the federal and state

governments were still uncoordinated and unprepared. The reasons they were unprepared go to the heart of the constitutional order. **III. FEDERAL LESSONS Unless we learn some lessons, Katrina will happen again. It may be a massive earthquake, an influenza pandemic, a terrorist attack, or even another hurricane,** but the same ill-

coordinated response will indeed happen again unless some attention is paid to the constitutional and institutional lessons of Katrina.

We need to "stop federalism" before it kills again. That is, we need to stop our customary thinking about what federalism requires in order to prevent another horrific loss of life and property.